



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

January 25, 1974

The Honorable David Wade, M. D.
Commissioner
Texas Department of Mental Health
and Mental Retardation
Box 12668, Capitol Station
Austin, Texas 78711

Open Records Decision No. 21

Dear Dr. Wade:

Representatives of an Austin newspaper have requested permission to examine the autopsy report of a former student at the Travis State School over which your Department has jurisdiction and control.

Citing Attorney General Opinion H-90 (1973) in which we made reference to the right of privacy, you express the belief that this record may fall within an exception to Article 6252-17a, V. T. C. S., the Open Records Law.

The performance of autopsies is governed by Chapter 49 of the Texas Code of Criminal Procedure. Generally autopsies may be performed under three conditions: (a) if the justice of the peace determines its necessity, and orders it done (Art. 49.03, V. T. C. C. P.); (b) when the next of kin consents (Art. 49.05, V. T. C. C. P.); or (c), in those counties which have a medical examiner, when in the opinion of the medical examiner an autopsy is necessary or when he is requested to perform an autopsy by the district or county attorney.(Art. 49.25, V. T. C. C. P.).

Art. 49.13, V. T. C. C. P., requires the Justice of the Peace to keep a full and complete record of every inquest including "[t]he full report and detailed findings of the autopsy. . . ." Art. 49.25, V. T. C. C. P., in its § 11, provides:

"The medical examiner shall keep full and complete records properly indexed. . . . The full report and detailed findings of the autopsy, if any, shall be a part of the record. . . . Such records shall be public records." (emphasis added)

It is our opinion, therefore, that autopsies made a part of an official inquest by a justice of the peace or made by a medical examiner as part of his determinations, are public records and are subject to examination by the public, including members of the press, aside from the Open Records Law. See Mahaffey v. State, 471 S. W.2d 801 (Tex. Crim. 1971), cert. den. 405 U.S. 1018 (1972); Prejean v. State, 480 S. W. 2d 652 (Tex. Crim. 1972).

If, on the other hand, the autopsy is not an "official" one but, instead, is done by the consent of a family member either at his request or at the request of a Department such as yours, a different rule may result. Under § 3 (a)(1) of the Open Records Law, Article 6252-17a, V. T. C. S. , information deemed confidential by law is to remain confidential.

Art. 5547-87, V. T. C. S. , part of the General Hospitalization Provisions of the Mental Health Code, but applicable to the records of the Department of MHMR, [Attorney General Opinion M-317 (1968)] provides:

"(a) Hospital records which directly or indirectly identify a patient, former patient, or proposed patient shall be kept confidential except where

"(1) consent is given by the individual identified, his legal guardian, or his parent if he is a minor;

"(2) disclosure may be necessary to carry out the provisions of this Code;

"(3) a court directs upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest, or

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"(4) the Board or the head of the hospital determines that disclosure will be in the best interest of the patient.

"(b) Nothing in this section shall preclude disclosure of information as to the patient's current condition to members of his family or to his relatives or friends."

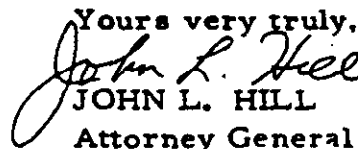
None of its exceptions are shown to apply here. Therefore this autopsy report (or medical records) is confidential and it is not subject to disclosure under § 3 (a)(1) of the Open Records Act, Article 6252-17a, V. T. C. S.

We are of the opinion, therefore, that insofar as the records, directly or indirectly, identify the patient, records of a state hospital or state school coming within the jurisdiction of the Department of Mental Health and Mental Retardation are confidential by statute and not required to be disclosed under the Open Records Act. Thus a report of an autopsy not made as part of an inquest by a justice of the peace or an investigation by an official medical examiner to determine cause of death, but included in the records of the Travis State School is confidential and not subject to disclosure under the Open Records Law if its disclosure would directly or indirectly identify the patient, with statutory exceptions.

Since the request from the newspaper identifies the person whose autopsy is desired, there is no way it could be disclosed without revealing the patient's identity. Therefore, unless it was an official autopsy or unless one of the exceptions to Article 5547-87 applies, its report is not disclosable.


SUMMARY

An autopsy performed either by or for a justice of the peace in the course of an inquest or by a medical examiner in determining the cause of death is a public record and subject to disclosure. A report of an autopsy performed privately with the consent of next of kin, cannot be divulged by a state hospital or state school unless certain exceptions exist.

Yours very truly,

JOHN L. HILL
Attorney General of Texas

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APPROVED:



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